



## Dealing with dead body donation: An issue of ethics, law and human rights

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### Abstract

Liberalization, privatization and globalization reforms 1991 lead to increase in the literacy rate, economical status & health awareness of Indian people. This was followed by privatization of medical education and hence, rise of private medical and dental colleges in India. Being unable to keep pace with the changing scenarios many colleges were indirectly in line of violation of laws. Many types of crimes are being reported by the media, one of them is related to the illegal dead body donation in Medical College by many N. G. O's like Dera Sacha Soda, which was in violation of Article 24 of the Haryana Anatomy Act 1974, etc. This paper deals with critical review of these violations and suggested remedies for preventing human rights as well as ethical and legal violations.

**Keywords:** human rights, anatomy, act, ethics, law, organ, medical, dental, unclaimed, dead bodies

### Introduction

Medical Council of India (MCI) stepped up their investigation in to alleged donation of dead body without concern and death certificate to the G.C.R.G Institute of Medical Sciences, Lucknow, Uttar Pradesh (U. P.), India. As mentioned in Nav Bharat Times page no.-10 dated 09/09/2017, from Jan. 2017 to May 2017, 14 dead body donated from the Dera sachu soda to G.C.R.G institute of medical sciences were made without any legal paper work [1].

The Agra police in U. P., initiated an investigation in the alleged human organs trading racket exposed by a news channel on January 14, 2007. A local channel, which carried out the sting operation, showed a private lab owner dealing in human parts. Agra police however, claimed about the recovery of human bones only on initial investigation. Retired Professor, Dr. A.K. Agarwal of S.N. Medical College, Agra, along with wild life experts were asked to assist in investigation [2,3].

Murder of children and women and the recovery of skeleton along with human flesh at Nithari, Noida, U. P. still horrifies a common man [4].

MCI in its requirement criteria mentions that dissection of human body is required by the students in 1<sup>st</sup> year MBBS curriculum [4]. To facilitate elaborate teaching of human anatomy, dead bodies are required by the Anatomy department. The Anatomy Act was aimed at enabling the use of dead bodies required by medical institutes [6].

Health and law being the State Subjects, the Haryana government provided medical institutes with the Anatomy Act, 1974 for enabling the donation of dead bodies of deceased persons to teaching medical institution for the purpose of anatomical examination and dissection [5].

The right to life which is the most fundamental of all rights is also the most difficult to define. Certainly it cannot be conferred to a guarantee against taking away of life; it must have a wider application. With reference to a corresponding provision in the 14<sup>th</sup> amendment of the U.S. Constitution, which says 'that no person shall be deprived of his/her "life,

liberty or property without due process of law" [8]. In a case Field, J. spoke of the right to life in the following words: "By the term 'life' as here used is meant to be something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world". The statement, which has been repeatedly quoted with approval by Indian Supreme Court, has been further expanded in another case by the statement "that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or temporarily, would be within the inhibition of Article 21". This right extends to the death and dignified disposal of the dead body also [9-11].

The Haryana anatomy Act No. 24 of 1974 defines in section 2 "Approved institution, means a hospital or a medical or teaching institution approved by the State Government for all or any of the purposes of this act [5]. At the time of enactment of Act there was no privatization of medical education. In Nav Bharat times on page no. 10 Prof. Manoj Dixit said "that G.C.R.G institute of medical sciences is approved for previous year but not approved for next year [1, 5]."

It needs mention that private medical and dental, colleges unless and until recognized and notified in the Official Gazette by the concerned State Government to carry on anatomical examination or dissection, or both, cannot take the privilege of the Anatomy Act. But essential certificate for permitting to open medical or dental college given by the State Government as 'No Objection Certificate' can be presumed recognition of the State Government.

This Act does not mention about the authorized person clearly (designation, department, etc.) to deal with the issue of use of unclaimed dead bodies. This situation leads to confusion and apprehension among the medical doctors about the legal complexities involved [5].

Maharashtra Anatomy Act under section 5A clearly authorizes the officer equal to the rank of Executive Magistrate to deal with the issue of use of unclaimed dead bodies<sup>[7]</sup>.

### Issue of Claimants

The Act 2C, "Near relative" means any of the following relatives of the deceased, namely, a wife, husband, parent, son, daughter, brother and sister, and includes any other person who is related to the deceased-

- I. By lineal or collateral consanguinity within three degrees in lineal relationship and six degrees in collateral relationship or
- II. By marriage either with the deceased or with any relative specifically mentioned in this clause or with any other relative with the aforesaid degrees<sup>[5]</sup>.

### Explanation

The expression 'lineal and collateral consanguinity' shall have the meaning assigned to them respectively in sections 25 and 26 of the Indian Succession Act, 1925

**Collateral Consanguinity:** Collateral are descendant in parallel lines, from a common ancestor or ancestress. For instance, brother is collateral, so is, sister. Similarly, paternal uncle and paternal aunt and their children, maternal uncle and maternal aunt and their children are collaterals, (Section 2c).

**Lineal Consanguinity:** It means descendants and ascendants; Descendants mean the offspring of a person. Immediate descendants of a person are his sons and daughters. The children of sons and daughters and their children, and so on, are also descendants. A person may have descendant through 'his sons and daughters up to any degree of descent. Similarly, ancestors of a person' are known as ascendants. Immediate ascendants of a person are his father and mother. The father and mother of his father and mother are also his ascendants, and so are their parents up to any degree of ascent.

There is need for further clarification of the position. Again the Act 2, does not mention about the position of unclaimed body when it belongs to other religions, (Muslim, Christians, etc.)

Body of a deceased person shall be deemed to be unclaimed if such person has no relatives, or if it has not been claimed' by any of his relatives, friends or servants within such period as may be prescribed in that behalf (Section 2e)<sup>[5]</sup>.

### Disputed claims

#### Doubtful dispute as to relative

Where any doubt or dispute arises whether person is a relative of the deceased, such the matter shall be referred to officer as may be appointed in this behalf by the State Government and his decision there on shall be final and conclusive, and pending such decision, the unclaimed dead body shall be preserved from decay in such manner as may be prescribed (Section 3,4).

Where a person under treatment in a hospital, whether established by or vested in, or maintained by, the State Government or any local authority, dies in such hospital and his body is unclaimed, the authorities in charge of such hospital shall with the least practicable delay report the fact to the authorized officer and such officer shall then hand

over the unclaimed body to the authorities in charge of an approved institution for any therapeutic purpose of conducting anatomical examination, dissection, surgical operation or research work {Section 5(1)}.

Where a person dies in a hospital other than a hospital referred to in sub-section (1), or in a prison and his body is unclaimed, the authorities in charge of such hospital or prison shall with the least practicable delay report the fact to the authorized officer, and such officer shall hand over the unclaimed body to the authorities in charge of an approved institution for any purpose specified in sub-section (1) {5(2)}.

Where a person having no permanent place of residence in the area where his death has taken place dies in any public place in such area and his body is unclaimed, the authorized officer of that shall take possession of the body and shall hand it over to the authorities in-charge of an approved institution for any purpose specified in sub-section (1) {Section 5(3)}.

Duty of police and other officials to assist in obtaining possession of unclaimed dead bodies: Any authority of officer empowered by under this Act<sup>[5]</sup> shall, in the discharge of their duties, be given such assistance and help as he may reasonably require by all the officers- and servants of the departments of police, medical, public health and of the local bodies (Section 7).

### Protection of persons

Acting under this Act: No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this "Act (Section 8)<sup>[13]</sup>.

### Officers to be Public Servants: [Section 9]

All Officers appointed or authorized to act under this Act shall be deemed to be Public Servants within the meaning of Section 21 IPC 1860<sup>[14]</sup>.

### Power to make rules [Section 10]

The state government may by notification, make rules for carrying out the purpose of this Act. Without prejudice to the generality of the foregoing power, such rules may prescribe the period within which a near relative may claim the body of a deceased person<sup>[5]</sup>.

### Procedure

The authority in charge of a hospital (Principal/M.S.) (or prison) immediately should give information of death of a destitute or a person alone died in the hospital to the nearest police station. The concerned police officer on receiving the information in the case of unclaimed dead body of a person:

- Dying in a hospital (or prison); or
- In a public place, not being place of his residence; or
- Who after having dedicated in writing that "his dead body can be used for the purpose of anatomical examination or dissection",

Take possession of the unclaimed dead body and after recording relevant information for fixing identity' letter on (height, age, sex, religion, belongings, photograph, etc.) after waiting' period of 48 hours (preferably 72 hours) hand it over to a government recognized medical institution; requesting it for anatomical examination or dissection or both. In case of unclaimed dead body, where deceased died

in a hospital or a prison or in a public place, not being his place of residence and where a relative is known to be alive but has for reason beyond his control failed to claim the body within 48 hours' period, police officer hand over the body to religious or public institutions belonging to the same religion of the deceased for final disposal as per the rites and rituals {Sec. 5 (1) (2) (3)} [15].

But in cases where deceased (unclaimed dead body) person, who prior to his death has specifically declared that his dead body shall not be subject to anatomical examination or dissection or both, shall be handed over by the police officer to religious or public institutions belonging to the same religion of the deceased for final disposal as per the rites and rituals {Section 8 (1)} [15].

The Principal/M.S. of a medical institution on the requisition of the Head of Anatomy department, forward or send fresh requisition in writing to the concerned police station (a copy to SSP/DM) mentioning reference of the Anatomy Act and Rules thereof (Section~ 2 of Rules) [16] that institution requires number of dead bodies for the purpose of the anatomical examination or dissection or both by the end of June every year. Similarly, if anybody intends to dedicate his dead body for purpose of anatomical examination and dissection make a letter in writing to the SSP/DM.

A register shall be maintained under the supervision of Head of Anatomy department where in recorded the date of reception, the place from which received, the sex, and, as far as is known at the time, the name and age of every person whose body has undergone anatomical examination, and the date of burial or cremation or such body {Section 10(4)} [17]. Head of the department or Principal in month of November in each year shall send the information regarding the donated dead body specifying the date when and the place from which received, the sex, and as far as is known at the time and age of every person whose body has undergone anatomical examination during the year, and the date of burial of cremation of such body to the police station {Section 10(5)} [17].

#### **Methods of disposal of unclaimed dead body: Paragraph 135-A, Police Regulations** [18]

The police officer in case of doubt as to the cause of death of the deceased and in any other case in his opinion it is expedient so to do, 'dispose of the unclaimed dead body in the manner as provided in Section 104 [19] {Section 5 (3) (a)} but after the repealing of this Act of 1898: by the new Act of 1973 [20], the procedure should be as per Section 174 [13]. Rules must clearly mention about disposal of dead body in the scenario' in which unclaimed dead body is not required by 'the authority in charge of a medical institution for anatomical examination or dissection. Rules must also mention about the period after which the medical, institution for prolonged preservation and use for anatomical examination and dissection may use the unclaimed dead body. Preferably this period should be within 72 hours after the death in ordinary case [2].

Paragraph 135-A read as "when a corpse recovered by the police is unclaimed or cannot be identified the police officer making enquiry under Section 174 [13], shall arrange to give the fact of discovery the widest possible publicity with a view to its identification as also to the tracing out of the deceased's relations, friends or acquaintances to whom it can be made over for disposal. In rural areas such publicity

shall be made by beat of drum and in urban areas the police officer may also take the help of the local press, broadcasting station, if any, and voluntary organizations like the Sewa Samiti. The police officer making the enquiry shall also as far as possible' endeavors to ascertain correctly. The faith to which the deceased belong in order to ensure proper disposal, if eventually necessary, of the corpse according to the customary rites of the faith to which the deceased belonged. With this end in view the officer concerned shall, besides making other enquiries, carefully examine the corpse to see if it has got any distinguishing features, such as might have held to establish the deceased, denomination and make an entry to this effect in the general diary and the inquest report.

If after due publicity a dead body remains unclaimed the Superintendent of Police of the district may hand it over to recognized medical college for the purposes of anatomical examination and dissection at their own expense. The officer-in charge of such college shall furnish to the Superintendent of Police a certificate to the effect that after anatomical examination and dissection the corpse was disposed' of according to the customary rites of the faith to 'which the deceased belonged {Paragraph 135~A} [18].

#### **Dealing with the Dead in a Medical College**

Attending medical officer should be present at the bedside in the case of dying patients. He will pronounce the patient as dead and give death report only after laps of an hour of pronouncing death. All cases of unclaimed dead bodies and in which death occurs suddenly under suspicious circumstances or in which death is directly or indirectly due to an accident must be reported to the local police authorities and the permission sought before releasing the body [21].

#### **Recommendations**

A website should be launched by the government to display detailed particulars of missing persons and unclaimed dead body anywhere in India, to help the relatives to search for missing persons and to avoid any legal complication or criminal activity [2].

#### **Summary and Conclusions**

In the changed scenario of privatization of medical, education it become necessary to amend the Anatomy Act, 1974 to keep pace with the amended related Acts like The Hindu Succession Act, 1929, the Code of Criminal Procedure, 1888 and other laws and most importantly to prevent human rights violations of the deceased, protected under the Article 21 of the Constitution of the India. Similar situation may be prevalent in other States of the India. That is why it is imperative to make a concerted effort at all India level by MCI, DCI, National Human Rights Commission (NHRC), all the State's Human Rights Commissions to look into the matter. and prevent human rights violations of the deceased in public interest.

Continued Medical Education (CME) / Workshops should be organized by the concerned medical colleges for doctors, police and others law enforcement agencies to prevent this unethical and illegal" act of human rights violations. The term medical institution should also-be qualified to cover the Dental Colleges for the purpose of this Act. There is need to amend the present Act.

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